

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

CR-13-72-GF-BMM

Plaintiff,

vs.

HARVEY AUGUSTUS SURE
CHIEF,

Defendant.

**FINDINGS AND
RECOMMENDATIONS TO
REVOKE DEFENDANT'S
SUPERVISED RELEASE**

I. Synopsis

The United States accused Harvey Augustus Sure Chief of violating his conditions of supervised release by failing to live at the place approved by his probation officer on September 18, 2017, and again on October 11, 2017. Mr. Sure Chief admitted to both of the violations. His supervised release should be revoked, and he should be sentenced to fourteen months in custody, with no term of supervised release to follow.

II. Status

On August 18, 2014, Mr. Sure Chief pleaded guilty to Assault Resulting in Serious Bodily Injury. (Doc. 24). United States District Judge Brian Morris sentenced him to thirty months in custody, with thirty-six months of supervised release to follow, on December 4, 2014. (Doc. 34).

On December 13, 2016, the United States Probation Office filed a Report on Offender Under Supervision notifying the Court that Mr. Sure Chief drank alcohol, traveled without permission, failed to report for urinalysis testing, and received a citation for driving without a license. (Doc. 38). Judge Morris allowed him to continue his supervised release.

On December 22, 2017, the Probation Office filed a Petition for Warrant or Summons and Order alleging Mr. Sure Chief had violated the terms of his supervised release by admitting that he smoked methamphetamine in November 2016 and drank alcohol on December 11, 2016. (Doc. 39). Judge Morris revoked Mr. Sure Chief's supervised release on February 15, 2017, because he violated the conditions of his supervised release by 1) not appearing for a counseling session, 2) not appearing for urinalysis testing, 3) not reporting to the probation office, and 4) failing to notify his probation office of a change in his address. (Doc. 48). Judge Morris sentenced him to three months in custody, with thirty-three months of supervised release to follow. (*Id.*) Mr. Sure Chief began his term of supervised

release on April 14, 2017.

On April 17, 2017, the Probation Office filed a Petition for Warrant for Offender Under Supervision accusing Mr. Sure Chief of violating the conditions of his supervised release by submitting a urine sample that tested positive for methamphetamine, marijuana, and alcohol. (Doc. 50). Mr. Sure Chief was sentenced to five months of custody with twenty-eight months of supervised release to follow. (Doc. 62). Mr. Sure Chief began his current term of supervised release on September 15, 2017.

Petition

On April 17, 2017, the Probation Office filed a Petition for Warrant for Offender Under Supervision accusing Mr. Sure Chief of violating the conditions of his supervised release by twice failing to live at the place approved by his probation officer. (Doc. 64). The Petition alleges Mr. Sure Chief arrived in Great Falls on September 16, 2017, with an approved plan to reside at the Great Falls Rescue Mission, and that on September 18, 2017, Mr. Sure Chief reported he had not been living there. The Petition further alleges Mr. Sure Chief informed the Probation Officers that he was living at the Central Motel in Great Falls, Montana, but that when the officers visited the motel on October 11, 2017, they were informed that Mr. Sure Chief had not been living there since October 7, 2017. Based on the allegations in the Petition, Judge Morris issued a warrant for Mr. Sure

Chief's arrest. (Doc. 65).

Initial appearance

Mr. Sure Chief appeared before the undersigned for an initial appearance on November 6, 2017, in Great Falls, Montana. Federal Defender Evangelo Arvanetes accompanied him at the initial appearance. Assistant United States Attorney Jared Cobell represented the United States.

Mr. Sure Chief said he had read the petition and understood the allegations. He waived the preliminary hearing, and the parties consented to proceed with the revocation hearing before the undersigned.

Revocation hearing

The Court conducted Mr. Sure Chief's revocation hearing on November 6, 2017. Mr. Sure Chief admitted he violated the conditions of his supervised release. The violations are serious and warrant revocation of his supervised release.

Mr. Sure Chief's violation grade is Grade C, his criminal history category is I, and his underlying offense is a Class C felony. He could be incarcerated for up to twenty-four months. He could be ordered to remain on supervised release for twenty-eight months, less any custody time imposed. The United States Sentencing Guidelines call for three to nine months in custody.

Mr. Sure Chief exercised his right of allocution and stated that he wanted to move back to Georgia with his family, and stated that he had difficulty leaving

prison and struggled on probation. Mr. Sure Chief requested that he serve an above guideline sentence, but with no term of supervised release to follow. Mr. Cobell agreed with the suggestion and recommended sixteen to eighteen months in custody, or in the alternative, seven months in custody with twenty-one months of supervised release to follow.

III. Analysis

Mr. Sure Chief's supervised release should be revoked because he admitted to violating its conditions. He should be sentenced to fourteen months in custody, with no supervised release to follow. This sentence would be sufficient given the serious violation of the Court's trust, but it would not be greater than necessary.

IV. Conclusion

Mr. Sure Chief was advised that the above sentence would be recommended to Judge Morris. The Court reminded him of his right to object to these Findings and Recommendations within 14 days of their issuance. The undersigned explained that Judge Morris would consider his objection, if it is filed within the allotted time, before making a final determination on whether to revoke his supervised release and what, if any, sanction to impose.

The Court **FINDS:**

Harvey Augustus Sure Chief violated the conditions of his supervised

release by failing to live at the place approved by his probation officer on September 18, 2017, and again on October 11, 2017.

The Court RECOMMENDS:

The district court should enter the attached Judgment, revoking Mr. Sure Chief's supervised release and committing him to the custody of the United States Bureau of Prisons for fourteen months, with no term of supervised release to follow.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO
OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A district judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge, and may waive the right to appear and allocute before a district judge.

Dated the 8th day of November, 2017.



John Johnston
United States Magistrate Judge